

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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: 09-47792  
In re: :  
: 271 Cadman Plaza East  
EAST FOURTEEN GARDENS, INC., : Brooklyn, New York  
:  
Debtor. : June 23, 2010  
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TRANSCRIPT OF HEARING FOR ORDER SCHEDULING STATUS CONFERENCE;  
CONFIRMATION HEARING; MOTION FOR ORDER APPROVING STIPULATION  
OF SETTLEMENT; CROSS MOTION TO DISMISS THE CASE  
BEFORE THE HONORABLE CARLA E. CRAIG  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DAVID CARLEBACH, ESQ.  
Law Offices of David Carlebach  
40 Exchange Place  
New York, NY 10005

For the Secured MICHAEL J. SHAVEL, ESQ.  
Creditor: Spector, Gadon & Rosen, PC  
1000 Lenola Road, P.O. Box 1001  
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For the U.S. Trustee: JACQUELINE A. FROME, ESQ.  
Office of the U.S. Trustee  
271 Cadman Plaza East, Suite 4529  
Brooklyn, NY 11201

Court Transcriber: MARY GRECO  
TypeWrite Word Processing Service  
211 N. Milton Road  
Saratoga Springs, NY 12866

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1 MR. CARLEBACH: Good afternoon, Your Honor. David  
2 Carlebach representing the debtor, East Fourteen Gardens.

3 MR. SHAVEL: Good afternoon, Your Honor. Michael  
4 Shavel; Spector, Gadon and Rosen on behalf of the secured  
5 creditor.

6 MS. FROME: Jackie Frome for the United States  
7 Trustee.

8 MR. CARLEBACH: Your Honor, there are a number of  
9 matters on today's calendar. I think with Your Honor's  
10 permission I would go forward with confirmation first.

11 Essentially, we filed a certification of ballots and  
12 the two impaired -- the only ballots that we received were from  
13 the two impaired classes. I sent ballots for all the classes  
14 of creditors but the only creditors who actually sent back the  
15 ballots were the impaired classes which was class one which was  
16 the secured claim of Markay [Ph.] East Fourteenth, LLC who  
17 voted their class one claim, impaired class of \$6,900,000.00 in  
18 favor of the plan. That's Exhibit A to the certification.

19 The second impaired class was the general unsecured  
20 creditors. We received a total of five ballots back from the  
21 class seven general unsecured creditors. There were four  
22 acceptances and one rejection. The acceptances were in the  
23 aggregate amount of \$1,529,356.65 and the rejection, the one  
24 rejection was in the amount of \$2,489.06.

25 So essentially we have not one but two impaired

1 classes that have accepted the plan and I believe that -- and  
2 those ballots were timely received. Under the circumstances I  
3 believe that confirmation of the plan is appropriate.

4 I would -- the debtor is here in the courtroom but I  
5 would like to make a proffer --

6 THE COURT: If you would.

7 MR. CARLEBACH: -- of the debtor's testimony. First  
8 instance, the plan complies with all of the applicable  
9 provisions of Chapter 11 and Section 1129 of the Chapter 11.  
10 Proponents of the plan complies with all the applicable  
11 provisions of Chapter 11. The plan has been proposed in good  
12 faith and not by any means forbidden by law. Any payment made  
13 or to be made by the proponent, by the debtor, or by a person  
14 issuing securities acquiring property under the plan for  
15 services or for costs and expenses in or in connection with the  
16 case or in connection with the plan and incident to the case  
17 has been approved by or is subject to the approval of the Court  
18 if reasonable.

19 THE COURT: What does that consist of in this case?

20 MR. CARLEBACH: I don't know that it actually has an  
21 application in this case. There is no, you know, payment being  
22 made under the plan or pursuant to the plan which --

23 THE COURT: No administrative expense payments?

24 MR. CARLEBACH: Well, other than a final fee  
25 application for myself which is, you know, would be brought on

1 post --

2 THE COURT: All right

3 MR. CARLEBACH: -- post confirmation --

4 THE COURT: All right

5 MR. CARLEBACH: -- there is no -- with respect to  
6 each impaired class of claims or interest, each holder of a  
7 claim or interest in such class has accepted the plan and/or  
8 will receive or attain under the plan on account of such claim  
9 or interest property of a value as of the effective date of the  
10 plan that is not less than the amount that such holder would so  
11 receive or retain if the debtor were liquidated under Chapter 7  
12 of this title on such date.

13 THE COURT: Explain how that is satisfied.

14 MR. CARLEBACH: Yes. Essentially we attached a  
15 liquidation analysis as an exhibit to the disclosure statement.  
16 We believe that the property in today's market is significantly  
17 lower than the amount of the secured claim. The secured  
18 creditor has valued there the property at \$6.9 million which is  
19 significantly lower than the secured claim which is well in  
20 excess of \$8 million. So it's clear that -- or this case could  
21 go to a Chapter 7 liquidation. The secured creditor would take  
22 the property and that would be it.

23 So what unsecured creditors are receiving under the  
24 plan clearly meets the best interests test in terms of their  
25 receiving more under the plan than they would in a liquidation.

1 Except to the extent of -- and again, with respect to each  
2 class of claim or interest, such class has accepted the plan or  
3 such class is not impaired under the plan, again, the only two  
4 impaired classes have voted to accept. All of the other  
5 classes are unimpaired. Even had they voted no by operation of  
6 law they would be deemed to have accepted the plan by virtue of  
7 their un-impairment, but as a practical matter, none of them  
8 sent back the ballots so they're not impaired and are deemed to  
9 have accepted the plan. Except to the extent that the holder  
10 of a particular claim has agreed to a different treatment of  
11 such claim the plan provides that with respect to a claim of a  
12 kind specified in Section 507(a)(2) or 507(a)(3) of this title  
13 on the effective date of the plan the holder of such plan will  
14 receive an account of such claimed cash equal to the allowed  
15 amount of such claim. Essentially all priority administrative  
16 secured claims are being paid in full.

17 THE COURT: And what's the source of that?

18 MR. CARLEBACH: The source of the payments, it's  
19 essentially set forth -- it's part of the settlement agreement  
20 that was reached with the global settlement agreement that was  
21 reached between the debtor and the secured creditor whereby the  
22 significant outstanding obligation are secured real estate  
23 taxes. Those taxes are being split pursuant to the settlement  
24 agreement which is incorporated under the plan and is an  
25 exhibit to the disclosure statement and is approved under the

1 plan. Essentially going to be a one-third two-third split  
2 whereby the debtor and its principal will be responsible for  
3 two-thirds of those tax obligations and the secured creditor  
4 will be responsible for one-third. Further, pursuant to the  
5 agreement the cash collateral that's in the debtor's account  
6 may be used for that purpose as well.

7 So essentially, the cash collateral, which today is  
8 about \$70,000.00 will be available to pay such claims and the  
9 balance is essentially being funded by the debtor's principal  
10 and is available essentially to fund the plan.

11 THE COURT: All right.

12 MR. CARLEBACH: Finally, with respect to a class of  
13 claims of a kind specified in Section 507(a)(1) and 507(a)(4),  
14 507(a)(5), 507(a)(6) or 507(a)(7) of this title, each holder of  
15 a claim of such class will receive, if such class has accepted  
16 the plan, deferred cash payments of a value as of the effective  
17 date of the plan equal to the allowed amount of such claim or  
18 if such class has not accepted the plan, cash on the effective  
19 date of the plan equal to allowed amount of such claim.

20 Once again, the secured creditor has essentially  
21 accepted to take the property back in full satisfaction of its  
22 claim. So that is part of the global settlement that has been  
23 worked out. So they have essentially accepted the plan and  
24 accepted the property as payment for their claim. We don't  
25 need to get into cram downs or deferred cash payments or net

1 present value issues because they've accepted the property in  
2 full payment of their claim.

3           Again, if the classes of claims is impaired under the  
4 plan, at least one class of claims that is impaired under the  
5 plan has accepted the plan and terminated without including any  
6 [unintelligible] of the plan by the insider previously stated  
7 with respect to the certification. We have not one but two  
8 classes of non-insider impaired classes that have accepted the  
9 plan. Confirmation of the plan is not likely to be followed by  
10 the liquidation or the need for further financial  
11 reorganization of the debtor or any successor to the debtor  
12 under the plan unless such liquidation or reorganization is  
13 proposed in the plan.

14           Again, we expect to close imminently on this  
15 transaction. In fact, there are -- as soon as I'm done with  
16 the proffer I was going to discuss that with Your Honor. We  
17 expect that the deal that is contemplated under the plan is  
18 going to -- we have an expedited closing. Property is going to  
19 be transferred. Taxes are going to be paid. There certainly  
20 would be no need for any further [unintelligible]. And we  
21 stated in the disclosure statement the corporate shell that  
22 will then be the debtor will very likely be simply dissolved as  
23 the business of this debtor was the ownership and management of  
24 this property to the extent that that is -- it no longer owns  
25 or will be managing the property, the debtor will not

1 essentially continue and there would be no, once again no need  
2 for a further liquidation or reorganization.

3           Finally, all fees payable under Section 1930 of Title  
4 28 as determined by the Court at the hearing on confirmation of  
5 the plan have been paid or the plan provides for the payment of  
6 all such fees in effect the date of the plan. The plan  
7 certainly does provide for the payment of such fees.

8           I'll assume that the United States Trustee -- again,  
9 I can't stay here today and say that we're fully current. If  
10 we are not current, that will be brought current. You know,  
11 certainly post confirmation will be bring any such fees  
12 current.

13           Essentially, with that presentation, Your Honor, that  
14 is what the debtor would testify to. I would ask that the  
15 Court confirm the plan.

16           There are a number of minor modifications which I  
17 would like to be included in the confirmation order which I can  
18 tell Your Honor now or if Your Honor would want to formally  
19 confirm the plan first, either way.

20           THE COURT: In the absence of objection I will  
21 confirm the plan.

22           MR. CARLEBACH: Thank you, Your Honor. There are  
23 actually --

24           THE COURT: We don't have a confirmation order here  
25 though.



1 MR. CARLEBACH: No, I do not. And the reason why is  
2 only because there are going to be, like I said, there are some  
3 modifications. I just wanted to advise the Court what those  
4 essentially non-material modifications, which I believe are  
5 appropriate to be included in the confirmation order. There  
6 was an objection filed by one of the tax creditors, the  
7 purchaser of the tax lien where they -- essentially, their  
8 objection was that the plan did not specifically state that  
9 they're entitled to post confirmation interest and we resolved  
10 that objection by agreeing to pay them post petition interest,  
11 excuse me. So I would just put that modification in the  
12 confirmation order just to make it clear that they will be paid  
13 post petition interest.

14 The other thing is with respect to the effective  
15 date. The plan has a generic, you know, effective date  
16 provision which calls for it to be effective I believe 11  
17 business days. We are under some time pressure given the time  
18 deadlines that are in the settlement agreement and we would  
19 like to -- in the absence of objection, there is no serious  
20 threat so to speak of an appeal being filed and we would want  
21 to wait, we would want to allow the plan to be effective  
22 immediately so we can close over the next few days without  
23 having to further delay the settlement which the parties are  
24 eager to consummate and are effectively -- we're teed up for an  
25 expedited closing and we'd like to go forward with that.

1 THE COURT: Do you think there's any problem with  
2 that, Ms. Frome?

3 MS. FROME: We won't have a problem with that I don't  
4 believe. My office has no objection to it.

5 THE COURT: All right. Okay.

6 MR. CARLEBACH: Also with respect to one of the main  
7 purposes of transferring this property through the plan is the  
8 provision which is included in the plan of the transfer tax  
9 provision of 1146. I just wanted to make that -- I would  
10 simply track the language that's in the plan just to  
11 specifically delineate in the confirmation order which is  
12 something that's traditionally done that the 1146 exemption  
13 from transfer taxes, just put that specifically into the  
14 confirmation order. It's not really a modification. It's just  
15 sort of putting that in the confirmation.

16 And finally, this really goes to the other matters  
17 that are on the calendar. There are two other matters that are  
18 on the calendar. I'll take the easy one first. There was a  
19 motion to dismiss which I believe has now become moot by virtue  
20 of the fact that the plan is confirmed. So we don't need to  
21 get to that one.

22 But there was also a motion and that was item number,  
23 I believe it was item number 50 on the calendar, or some  
24 [inaudible]. The other thing, there was a motion to approve  
25 the stipulation of settlement in this case. It was approved in

1 the context of the affiliate case, Filmont Square, and I would  
2 say rather than enter a separate 9019 order, you could say to  
3 me well it's already been approved, it's part of the plan, and  
4 it is, but just to give the secured creditor the comfort, I  
5 would just put it right into the confirmation order stating  
6 that the settlement agreement is approved pursuant to the plan  
7 and under Rule 9019, so that would -- that's the final item  
8 that I would add into the confirmation order.

9 THE COURT: That's fine.

10 MR. CARLEBACH: With respect to the status  
11 conference, I would think to the extent that I'm going to be  
12 putting in a final fee application, I would just ask for a date  
13 say 45 days out where, you know, we could clean up final  
14 decree, final fee application.

15 THE CLERK: August 4th at 2:30.

16 MR. CARLEBACH: August 11th?

17 THE COURT: August 4.

18 MR. CARLEBACH: August 4 at 2:30. And I will submit  
19 the confirmation order.

20 THE COURT: All right. Thank you.

21 MR. CARLEBACH: Thank you, Your Honor.

22 MS. FROME: Thank you.

23 MR. SHAVEL: Thank you, Your Honor.

24 \* \* \* \* \*

25

1 I certify that the foregoing is a court transcript from an  
2 electronic sound recording of the proceedings in the above-  
3 entitled matter.

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5 \_\_\_\_\_  
6 Mary Greco

7 Dated: July 18, 2010  
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<b>\$</b>	<b>add</b> <sup>[1]</sup> 11:8	<b>certification</b> <sup>[3]</sup> 2:11,18 7:7	<b>delay</b> <sup>[1]</sup> 9:23
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